IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4496 OF 2005

The Administrator-cum-
Commissioner .. Petitioner

Vs.

Shahid Ahmed Abdul Salam
R. Farid .. Respondent

Mr. I.R. Kulkarni for the Petitioner.

CORAM: B.H. MARLAPALLE, J.

Date : August 04, 2005.

P.C.:

1. Heard Mr. Kulkarni the learned counsel for the petitioner.

2. The respondent-employee was chargesheeted on 8-5-1987 and pending enquiry he was suspended with effect from 11-5-1987. He had submitted his reply to the chargesheet on 21-7-1987. The Corporation did not hold any departmental enquiry and straight way passed an order on 30-11-1987 inflicted punishment of withholding 3 increments. The complainant was also transferred from the post of Naka Clerk to other

department. For the period of suspension from 11-5-1987 to 30-11-1987 he was paid subsisting allowance at the rate of 50% of his salary. The punishment order dated 30-11-1987 came to be challenged in Complaint (ULP) No.457 of 1987 and the complaint was allowed by the Industrial Court at Thane vide judgment and order dated 13-3-1992 holding that the Corporation had engaged an acts of unfair labour practice under Items 3 and 9 of Schedule IV of the M.R.T.U. & P.U.L.P. Act 1971. The Corporation was directed to withdraw the punishment and order of transfer dated 30/11/1987 forthwith. The respondent-employee raised the claim for arrears of salary for the period of suspension i.e. the balance of 50% of the salary. The employer did not concede to this demand and, therefore, he approached the Industrial Court at Thane in Misc. Application (ULP) No.2 of 1993 which was rejected vide order dated 30-3-1994. The respondent, therefore, instituted fresh complaint for seeking recovery of the 50% salary for the suspension period and the said complaint came to be registered as Complaint (ULP) No.643 of 1994. After hearing the respective parties and considering

the rival contentions as well as the evidence adduced by both the parties, the complaint came to be partly allowed by the impugned judgment and order dated 21-11-2002. The Corporation has been directed to pay the balance of 50% wages for the suspension period within one month. This order was passed about three years back and Mr. Kulkarni, the learned counsel for the Corporation is not aware whether it has been implemented within the stipulated period of one month.

3. The Industrial Court considered its earlier decision in Complaint (ULP) No.457 of 1987 by which the order of punishment was set aside and the complainant was held to be not guilty of the charges levelled against him. Consequently, the Industrial Court was of the opinion that the suspension was not warranted and the complainant was entitled for the balance of 50% salary. The Industrial Court also considered that for the suspension period the complainant would not be entitled for other benefits like cash allowance etc. which he used to receive while in the Octroi Department. The view taken by the Industrial Court is a possible view and it cannot be

termed as perverse or grossly erroneous so as to call for interference under Article 227 of the Constitution.

4. The petition is, therefore, rejected summarily.

(B.H. Marlapalle,J.)